



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      ARI-C

### **Introduction**

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") and the *Residential Tenancy Regulation* (the "**Regulation**") for an additional rent increase for capital expenditure pursuant to section 23.1 of the Regulation.

This matter was reconvened from a preliminary hearing held on March 21, 2022. Following that hearing I issued an interim decision on the same date. This decision should be read in conjunction with the interim decision.

Tenant SM attended this hearing on his own behalf. The landlord was represented at the hearing by its vice president ("**AW**"), property manager ("**AA**") and resident manager ("**PS**").

PS testified that he had served all but eight of the tenants with the interim decision and notice of reconvened hearing personally. He testified that the remaining eight tenants were served by registered mail. SM confirmed that he received the required documents from PS. I find that the tenants have been served with the required documents in accordance with the interim decision and the act.

None of the tenants submitted any documentary evidence or written statements in response to this application.

### **Issues to be Decided**

Is the landlord entitled to impose an additional rent increase for capital expenditures?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The residential property is an eight-story apartment building with 37 dwelling units (the "**Building**").

AW testified that the landlord was seeking to impose an additional rent increase for a capital expenditure incurred to pay for a work done to replace the Building's generator. He testified that the old emergency generator was removed in September 2020 (the "**Old Generator**") and replaced with a new emergency generator (the "**New Generator**") which was then enclosed in a "gate enclosure" or "cage" (the "**Cage**") per local municipal bylaws (collectively, the "**Work**").

The New Generator, in the case of emergencies, powers the lights in Building's hallways and stairwells, as well as the parkade gate and the rear and front entrance key fob system. AA testified that the Old Generator was at the end of its useful life, having been installed over twenty years ago. He testified that the landlord conducted annual servicing on the Old Generator, and that on the last service call, the technician advised the landlord that it was failing and that spare parts to repair it were no longer available.

AW testified that the New Generator has a life expectancy of between 15 to 20 years, and that the landlord gets it serviced semi-annually.

The landlord paid a contractor a deposit of \$7,952.50 on May 8, 2020 and \$9,861.10 on September 10, 2020 for the removal of the Old Generator and the supply and installation of the New Generator. The landlord paid a different company \$3,150 on September 1, 2020 for the supply and installation of the Cage. The landlord provided invoices supporting these amounts.

The landlord made this application on October 8, 2021.

Tenant SM argued that the cost of the installation should be apportioned among all occupants of the Building, and not just those who rent apartments. He testified that two of the units in the Building are occupied by their owners, and therefore do not pay the landlord any rent.

Additionally, SM testified that the telecom company Rogers installed and operates a cell tower on the roof of the Building, and that, as a result, it gains a benefit from the installation of the New Generator. AA interjected to say that the New Generator does not power neither the cell tower nor the locking system to the roof (access to the roof of the Building is via a lock and key)

SM stated that Rogers gains a benefit from the New Generator, as any Roger's technicians visiting the Building to service the cell tower during a power outage would have the benefit of illuminated hallways and stairwells in the Building on their way to the roof.

The parties agreed that the landlord has not imposed an additional rent increase pursuant to sections 23 or 23.1 of the Regulations in the last 18 months.

## **Analysis**

### **1. Statutory Framework**

Sections 21.1, 23.1, and 23.2 of the Regulation set out the framework for determining if a landlord is entitled to impose an additional rent increase for capital expenditures. I will not reproduce the sections here but to summarize, the landlord must prove the following, on a balance of probabilities:

- the landlord has not successfully applied for an additional rent increase against these tenants within the last 18 months (s. 23.1(2));
- the number of specified dwelling units on the residential property (s. 23.2(2));
- the amount of the capital expenditure (s. 23.2(2));
- that the Work was an *eligible* capital expenditure, specifically that:
  - o the Work was to repair, replace, or install a major system or a component of a major system (S. 23.1(4));
  - o the Work was undertaken for one of the following reasons:
    - to comply with health, safety, and housing standards (s. 23.1(4)(a)(i));
    - because the system or component:
      - was close to the end of its useful life (s. 23.1(4)(a)(ii)); or
      - had failed, was malfunctioning, or was inoperative (s. 23.1(4)(a)(ii));
    - to achieve a reduction in energy use or greenhouse gas emissions (s. 23.1(4)(a)(iii)(A)); or
    - to improve the security of the residential property (s. 23.1(4)(a)(iii)(B));
  - o the capital expenditure was incurred less than 18 months prior to the making of the application (s. 23.1(4)(b)); and
  - o the capital expenditure is not expected to be incurred again within five years (s. 23.1(4)(c)).

The tenants may defeat an application for an additional rent increase for capital expenditure if they can prove on a balance of probabilities that the capital expenditures were incurred:

- for repairs or replacement required because of inadequate repair or maintenance on the part of the landlord (s. 23.1(5)(a)); or
- for which the landlord has been paid, or is entitled to be paid, from another source (s. 23.1(5)(a)).

If a landlord discharges their evidentiary burden and the tenant fails to establish that an additional rent increase should not be imposed (for the reasons set out above), the landlord may impose an additional rent increase pursuant to sections 23.2 and 23.3 of the Regulation.

## 2. Prior Application for Additional Rent Increase

Based on the evidence presented at the hearing, I find that the landlord has not imposed any additional rent increase on any of the tenants in the last 18 months.

## 3. Number of Specified Dwelling Units

Section 23.1(1) of the Act contains the following definitions:

"dwelling unit" means the following:

- (a) living accommodation that is not rented and not intended to be rented;
- (b) a rental unit;

[...]

"specified dwelling unit" means

- (a) a dwelling unit that is a building, or is located in a building, in which an installation was made, or repairs or a replacement was carried out, for which eligible capital expenditures were incurred, or
- (b) a dwelling unit that is affected by an installation made, or repairs or a replacement carried out, in or on a residential property in which the dwelling unit is located, for which eligible capital expenditures were incurred.

The Building has 37 specified dwelling units, as defined by the Act. This includes those units occupied by owners (and not renters) as well as occupants of the building who moved in after the New Generator was installed. Even though the landlord is not seeking rent increases against the occupants of these units, these units are considered "specified dwelling units" for the purposes of this application.

## 4. Amount of Capital Expenditure

Based on the invoices submitted into evidence, I find that the landlord incurred a cost of \$20,963 undertaking the Work, calculated as follows:

Description	Amount
Removal of Old Generator and Install and Supply of New Generator	\$17,813.60
Install and Supply of Cage	\$3,150.00
<b>Total</b>	<b>\$20,963.60</b>

## 5. Is the Work an Eligible Capital Expenditure?

As stated above, in order for the Work to be considered an eligible capital expenditure, the landlord must prove the following:

- the Work was to repair, replace, or install a major system or a component of a major system
- the Work was undertaken for one of the following reasons:
  - to comply with health, safety, and housing standards;
  - because the system or component:
    - was close to the end of its useful life; or
    - had failed, was malfunctioning, or was inoperative
  - to achieve a reduction in energy use or greenhouse gas emissions; or
  - to improve the security of the residential property;
- the capital expenditure was incurred less than 18 months prior to the making of the application;
- the capital expenditure is not expected to be incurred again within five years.

I will address each of these in turn.

a. Type of Capital Expenditure

The Work amounted to upgrades to the buildings' electrical system. The Regulation explicitly identifies a residential property's electrical system as a "major system". The landlord installed a new emergency generator and required safety equipment. These amount to significant components of the electrical system, which cause them to be "major components", as defined by the Regulation.

As such, I find that the Work was undertaken to replace "major components" of a "major system" of the residential property.

b. Reason for Capital Expenditure

I accept a WS undisputed testimony that the Old Generator was replaced because it was nearing the end of its useful life and was starting to fail.

c. Timing of Capital Expenditure

Residential Tenancy Branch Policy Guideline 40 states:

A capital expenditure is considered "incurred" when payment for it is made.

All of the payments made by the landlord for the Work or made less than 18 months prior to the date the landlord made this application.

d. Life expectancy of the Capital Expenditure

RTB Policy Guideline 40 sets out the useful life of a generator as 25 years. AW testified that the life expectancy of the New Generator is between 15 and 20 years. Based on this, I find that the life expectancy of New Generator replaced will exceed five years and that the capital expenditure to replace them cannot reasonably be expected to reoccur within five years.

For the above-stated reasons, I find that the capital expenditure incurred to undertake the Work is an eligible capital expenditure, as defined by the Regulation.

## 6. Tenants' Rebuttals

As stated above, the Regulation limits the reasons which a tenant may raise to oppose an additional rent increase for capital expenditure. In addition to presenting evidence to contradict the elements the landlord must prove (set out above), the tenant may defeat an application for an additional rent increase if they can prove that:

- the capital expenditures were incurred because the repairs or replacement were required due to inadequate repair or maintenance on the part of the landlord, or
- the landlord has been paid, or is entitled to be paid, from another source.

Tenant SM did not make submissions on either of these bases. Rather, he argued that amount of the rent increase for each of the tenants should be reduced to account for owners who occupy units in the Building and for the fact that Rogers derives a benefit from the installation of the New Generator.

As stated above, for the purposes of the additional rent increase, all dwelling units (not just those occupied by renters) are included for the purpose of calculating the rent increase for each of the tenants. As such, the tenants will not subsidize the owners who reside in the Building. Rather, any amount the landlord would otherwise be able to recover from an occupant of a unit if the occupant is not an owner, is instead not recoverable at all by the landlord.

The Regulation does not provide any basis on which a landlord could impose a rent increase on a commercial occupant or any commensurate reduction to tenants due to the presence of a commercial occupant. Additionally, the benefit Rogers gains from the presence of the New Generator is so negligible, that I would not find it appropriate to include the area Rogers occupies (the roof) for the purposes of this application.

## 7. Outcome

The landlord has been successful. It has proved, on a balance of probabilities, all of the elements required in order to be able to impose an additional rent increase for capital expenditure. Section 23.2 of the Regulation sets out the formula to be applied when calculating the amount of the additional rent increase as the number of specific dwelling units divided by the amount of the eligible capital expenditure divided by 120. In this

case, I have found that there are 37 specified dwelling unit and that the amount of the eligible capital expenditure is \$20,963.60.

So, the landlord has established the basis for an additional rent increase for capital expenditures of \$4.72 ( $\$20,963.60 \div 37 \text{ units} \div 120$ ). If this amount exceeds 3% of a tenant's monthly rent, the landlord may not be permitted to impose a rent increase for the entire amount in a single year.

The parties may refer to RTB Policy Guideline 37, section 23.3 of the Regulation, section 42 of the Act (which requires that a landlord provide a tenant three months' notice of a rent increase), and the additional rent increase calculator on the RTB website for further guidance regarding how this rent increase made be imposed.

### **Conclusion**

The landlord has been successful. I grant the application for an additional rent increase for capital expenditure of \$4.72. The landlord must impose this increase in accordance with the Act and the Regulation.

I order the landlord to serve the tenants with a copy of this decision in accordance with section 88 of the Act.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 17, 2022

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Residential Tenancy Branch